

P-999/CI-87-697 ORDER SETTING IMPLEMENTATION GUIDELINES FOR INTRALATA
1+ PRESUBSCRIPTION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of an Investigation into
IntraLATA Equal Access and Presubscription

ISSUE DATE: July 21, 1994

DOCKET NO. P-999/CI-87-697

ORDER SETTING IMPLEMENTATION
GUIDELINES FOR INTRALATA 1+
PRESUBSCRIPTION

PROCEDURAL HISTORY

On October 15, 1985, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER in Docket No. P-442, 443, 444, 421, 433/NA-84-212.¹ In that Order the Commission found that both intrastate interLATA and intrastate intraLATA competition are in the public interest. The Commission adopted a policy allowing interLATA and intraLATA competition for interexchange services in the State of Minnesota.

On November 2, 1987, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND ORDER INITIATING SUMMARY INVESTIGATIONS in Docket No. P-999/CI-85-582.² In that Order the Commission found, among other things, that intraLATA equal access presubscription³ is necessary for effective competition. The Commission also found that there was conflicting evidence regarding the technology available for providing intraLATA 1+ presubscription, and regarding the time required to develop new technology. The Commission found further that a method must be established to pay for the development and installation of intraLATA presubscription.

To address these issues, the Commission established the Equal Access and Presubscription Implementation Study Committee (the 697 Committee) and assigned the matter to Docket No. P-999/CI-87-697. The 697 Committee was composed of representatives of the Department of Public Service (the Department), Allnet Communications Corporation (Allnet), Arvig Telecommunications, GTE, MCI Telecommunications Corporation (MCI), Mankato Citizens Telephone Company, Minnesota Independent Coalition (MIC), the Minnesota State Planning Agency, Sprint, US WEST Communications, Inc. (US WEST), United Telephone Company

¹ In the Matter of a Consolidated Proceeding to Investigate the Provision of Intrastate Intercity Telecommunications Services Within the State of Minnesota.

² In the Matter of a Summary Investigation into IntraLATA Toll Access Compensation for Local Exchange Carriers Providing Telephone Service Within the State of Minnesota.

³ Equal access presubscription was defined in the Commission's November 2, 1987, Order as: "... the ability [of an end user] to access a preselected [interexchange carrier] for a toll call by dialing only the prefix 1 or 0 and the appropriate telephone number." Order at p. 41.

(United), Vista, and Commission Staff.

In the November 2, 1987, Order, the Commission also determined that US WEST should serve temporarily as the designated carrier for intraLATA toll calls in Minnesota. To address the permanent treatment of the designated carrier, the Commission established an Intrastate IntraLATA Toll Access Compensation Study Committee (the 695 Committee) and assigned the matter to Docket No. P-999/CI-87-695.

On June 30, 1989, the 697 Committee submitted a report including twelve recommendations to the Commission.

In October and November, 1989, comments were filed by US WEST, the Department, the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), United, GTE, MIC, Allnet, MCI, Cable & Wireless, and AT&T.

In July, 1990, the Commission informed interested parties that the 697 proceeding would be put on hold pending resolution of a certificate proceeding brought by the Minnesota Independent Equal Access Corporation (MIEAC), Docket No. P-3007/NA-89-76.⁴

On January 10, 1991, the Commission granted MIEAC a certificate of authority to provide centralized intrastate interLATA and intraLATA equal access and presubscription to participating independent local exchange companies (ILECs). ORDER GRANTING CERTIFICATE OF AUTHORITY TO PROVIDE EQUAL ACCESS SERVICE TO MIEAC.

After certain compliance and implementation issues were resolved in the MIEAC docket, the Commission again turned to the 697 proceeding. Realizing that the 697 Committee's 1989 report was in part outdated, the Commission reactivated the Committee. The Commission directed the 697 Committee to submit current information regarding the cost and availability of 1+ intraLATA presubscription. ORDER DENYING PETITION AND RECONVENING THE 697 STUDY COMMITTEE, Docket No. P-999/CI-85-582 (March 30, 1993).

The 697 Committee submitted updated cost and availability data on August 16, 1993.

In September, 1993, comments regarding the original and the updated report were filed by US WEST, MCI, United, and MIC. Following issuance of a January 18, 1994, Order allowing additional comments, further comments were filed by the Department, US WEST, the RUD-OAG, MIC, and AT&T.

The matter came before the Commission for consideration on June 29, 1994.

FINDINGS AND CONCLUSIONS

I. Introduction

In this Order the Commission will first describe the main features of equal access presubscription.

The Commission will next analyze the original and updated 697 Committee reports. These reports contained cost estimates for the provision of intraLATA equal access presubscription,

⁴ In the Matter of the Minnesota Independent Equal Access Corporation's Application for a Certificate of Public Convenience and Necessity.

projected availability of necessary software, and twelve specific recommendations for Commission consideration.

The Commission will address several other issues which were raised by the parties in their comments on the Committee report.

Finally, the Commission will address US WEST's objections to the Committee's report and US WEST's due process arguments.

II. Equal Access and Presubscription Background

A. Historical Background

The majority of Minnesota customers have had intrastate **inter**LATA equal access for several years, either through end office conversion or through centralized equal access for ILECs participating in MIEAC. The Commission has ordered all Minnesota LECs to provide interLATA equal access by January 1, 1997, unless granted a waiver by the Commission.⁵

The Commission is now focusing on intrastate **intra**LATA equal access. The Commission has found that intraLATA equal access with presubscription is in the public interest and is necessary for true competition. The 697 Committee was convened to make recommendations to the Commission on an implementation schedule and a compensation mechanism for the statewide provision of intraLATA presubscription.

B. The Presubscription Process

Equal access intraLATA presubscription is the process by which customers may select a Primary Interexchange Carrier (PIC) to carry their intraLATA interexchange calls on a 1+ basis. In order for IXC's to have the ability to serve these customers, the local central office must offer what is known as equal access including presubscription.

Two methods which have been identified within the industry for the provision of intraLATA presubscription are the "2-PIC" (or "Full 2-PIC") and the "Modified 2-PIC."

Under the Full 2-PIC method, software within end office switches is modified to accommodate intraLATA originating calls. On those 1+ calls, the switch reads the PIC entry to determine the caller's primary intraLATA carrier. The carrier can be any authorized intraLATA carrier, regardless of the customer's choice of interLATA carrier.

Under the Modified 2-PIC method, end office software allows customers to designate their interLATA primary carrier as their intraLATA primary carrier. If customers do not wish to choose the same carrier, intraLATA calls are routed to the end office's Designated IntraLATA Toll Provider (DITP).

II. The Committee's Cost Data for the Provision of IntraLATA Presubscription

Cost data gathered by the 697 Committee include right-to-use fees for intraLATA software features in conforming end office switches, and costs of network reconfiguration, modifications

⁵ In the Matter of a Commission Initiated Investigation to Establish Requirements for the Telecommunications Infrastructure in Minnesota, Docket No. P-999/CI-93-1176, ORDER APPROVING SHORT-TERM AND INTERMEDIATE INFRASTRUCTURE RECOMMENDATIONS AS MODIFIED AND ESTABLISHING A COMMENT PERIOD, May 19, 1994.

to operational support systems, and customer balloting and education.

The updated data indicate costs between \$29 and \$33 million to convert all 436 remaining switches to 1+ intraLATA equal access, or approximately \$66,514 to \$75,688 per switch. Of the estimated costs, US WEST's portion is approximately \$6.3 million for conversion of 206 switches; United's, GTE's and Vista's portion is approximately \$18.7 million for 145 switches; the remaining ILECs' share is between \$4.2 and \$8 million for the remaining 85 switches.

In their data US WEST and GTE have assumed that Minnesota would be the only jurisdiction in their multi-state service territories which would require intraLATA presubscription. Because these companies loaded their companywide system conversion costs into the data, the actual costs may be lower than projected. AT&T has also indicated that costs for some of its software may be lower than projected.

III. The Committee's Projected Availability of Necessary Software

The 697 Committee reported that the availability of software necessary for the conversion to intraLATA presubscription differed by the vendor and the type of switch. Some software was available at the time of the report, some would be available by January, 1994, and some would be available 15-24 months from the date of contracting with the vendor.

IV. Recommendations of the 697 Committee

The 697 Committee met for 17 months beginning in February, 1988. During that time, the full Committee met 26 times. In addition, an engineering subcommittee met three times to draft technical aspects of the report.

The 697 Committee drafted a report containing 12 specific recommendations for the implementation of intraLATA presubscription. Most of the report reflected the consensus of the members of the Committee. On one issue, the choice of mandatory or voluntary IXC participation, the Committee agreed that consensus would not be reached and a specific recommendation would not be made.

The 12 recommendations of the 697 Committee can be grouped and analyzed under the following ten issues addressed.

A. Recovery of Costs for Providing IntraLATA Equal Access and Presubscription

1. The Committee Recommendation

The 697 Committee made the following recommendation regarding LEC recovery of the costs associated with intraLATA 1+ presubscription:

The implementation of intraLATA equal access should, to the greatest extent possible, mirror interLATA equal access in terms of technical standards, customer perception standards, and cost recovery.

2. Commission Analysis

The Commission notes that basing intraLATA cost recovery upon interLATA models, as recommended by the 697 Committee, can produce differing results. On the federal level, interstate interLATA equal access implementation costs were recovered from IXCs based on the number of presubscribed access lines immediately following customer balloting. In Minnesota, the intrastate interLATA equal access conversion costs for US WEST are currently being

recovered through an Equal Access Network Reconfiguration charge to all IXC's on a per minute of use basis. Docket No. P-421/CI-85-352. MIEAC is currently recovering its costs of providing both interLATA and intraLATA centralized equal access through a per minute of use centralized equal access charge assessed to IXC's.

The Commission agrees with US WEST that basing the cost recovery upon the federal interLATA model would be inappropriate in this case. US WEST as the current designated intraLATA carrier would bear a disproportionate burden of costs based on presubscribed access lines. The Commission does not agree with US WEST, however, that further proceedings are necessary to decide this issue.

The Commission finds that a per minute of use model is an appropriate method of cost recovery for intraLATA equal access conversion. Under this method, LEC's wishing to raise rates to recover intraLATA equal access costs must propose a per minute of use charge that is recovered from all intrastate switched access minutes of use, including minutes carried by US WEST. This method would spread the cost recovery over the greatest number of minutes and would keep intraLATA and interLATA access charges the same. This method also has the benefit of mirroring our state model for interLATA cost recovery.

The Commission will require that cost recovery be assessed from all LEC's' intrastate switched access minutes of use, both interLATA and intraLATA. Recovery based on both interLATA and intraLATA minutes of use is appropriate for two reasons. First, this method parallels intrastate interLATA equal access cost recovery. Second, in the 582 case from which the 697 Committee arose, the Commission approved an overall intrastate access charge. Applying the intraLATA equal access costs to both interLATA and intraLATA minutes of use avoids creating a second, separate access charge for intraLATA-only access.

The Commission will require that LEC's wishing to recover costs through a proposed per minute of use charge must amortize the charges over five years. Although AT&T suggested an amortization period of eight years, AT&T's proposal included a surcharge on intraLATA minutes of use only. The Commission finds that a five-year amortization is most appropriate for cost recovery based on intraLATA and interLATA minutes of use.

The Commission will require the LEC's to submit their actual intraLATA presubscription implementation costs for Commission review in year four of the amortization period, along with projected revenues through year four. The companies should also submit a final estimate of the rate required in year five to fully recover costs, using updated minutes of use. The LEC's should use their most recently authorized rate of return as their cost of money in calculating the proposed rate for years one through four and in the year four filings.

B. Timing of IntraLATA 1+ Equal Access Implementation

1. The Committee Recommendation

The 697 Committee made the following recommendation regarding the deployment of intraLATA 1+ equal access:

When intraLATA equal access technology becomes available for an end office, the LEC must provide intraLATA equal access, using the same guidelines as outlined in FCC Docket CC 78-72 for interLATA equal access, if:

- a. The end office is not converted to interLATA equal access and a bona fide request (BFR) for interLATA and intraLATA equal access has been received; or,
- b. The end office is converted to interLATA equal access and a BFR for intraLATA equal access has been received.

The Committee stated that its recommendation would promote efficiency by avoiding investment in equal access plant unless there is both the capability of providing the service and an IXC desiring equal access.

The 697 Committee believed that its BFR-driven approach would facilitate economies of scope for IXCs and LECs, and would minimize costs of balloting and software conversion.

2. Commission Analysis

The Commission notes that certain facts have changed since the 697 Committee first drafted its recommendations in 1989.

Since 1989, the Commission has issued an Order requiring all LECs to offer intrastate interLATA equal access by January 1, 1997, unless a waiver is obtained.

Since 1989, MIEAC has been approved and intraLATA presubscription has become available in many ILEC exchanges.

These changed circumstances indicate that the Committee's recommendation should be somewhat modified. The Commission will extend the January 1, 1997, date certain for interLATA presubscription implementation to intraLATA presubscription. This coordination of intraLATA and interLATA equal access should provide benefits of efficiency and economy of scope. It will also ensure that the recognized benefits of competition in intraLATA presubscription will be extended to all exchanges by January 1, 1997, at the latest.

The Commission notes the need for some flexibility for IXCs who wish to implement 1+ intraLATA equal access before January 1, 1997. The Commission will therefore approve a process by which a LEC must provide 1+ presubscription within a maximum of 18 months after receipt of an IXC's BFR.

The Commission will also provide flexibility for LECs who need an extension of time or waiver for implementation of intraLATA 1+ presubscription in a specific end office. The LEC must file for the extension or waiver within 60 days of receipt of a BFR for the particular end office.

A LEC which must implement intraLATA 1+ presubscription either in response to a BFR or by the date certain may use either end office conversion or centralized equal access to provide the equal access.

C. Choice of IntraLATA Carrier

1. The Committee's Recommendation

The 697 Committee made the following recommendation regarding the choice of a Full 2-PIC or Modified 2-PIC method of intraLATA 1+ presubscription:

The "Full 2-PIC" method for customer selection of prescribed intraLATA carrier should be implemented by the Commission. This method would allow customers to select as their intraLATA carrier any authorized carrier providing intraLATA service in that exchange, regardless of who their interLATA carrier may be. This maximization of the customer's options outweighs the higher implementation cost of about \$1.25 million (approximately 10%) for the "Full 2-PIC" method over the "Modified 2-PIC" method.

The 697 Committee cited customer freedom of choice as the greatest advantage of the Full 2-PIC method.

Commenting parties supported the Committee's recommendation, and noted that software was

available for the Full 2-PIC method.

2. Commission Analysis

The Commission agrees with the Committee that the Full 2-PIC method of intraLATA 1+ presubscription should be implemented. This method offers customers the greatest possible freedom of choice. It also parallels MIEAC's intraLATA presubscription offering. Parties have stated that Full 2-PIC service can be provided by all switch vendors.

The Commission will require intraLATA 1+ presubscription service to be offered under the Full 2-PIC method.

D. Balloting and Allocation

1. The Committee's Recommendation

The 697 Committee made the following recommendation regarding balloting endusers for intraLATA presubscription service and allocation of endusers who have not made affirmative presubscription choices:

In offices that have already been balloted for interLATA equal access, no intraLATA balloting [should] occur. Instead, intraLATA carriers would be responsible for and have the incentive to attract customers.

[For exchanges converting to interLATA and intraLATA equal access at the same time] the balloting for intraLATA presubscription [should] occur concurrently with the balloting for interLATA presubscription. Customers who have not made affirmative intraLATA presubscription choices would be allocated.

The Committee's recommendation was based upon a desire to reduce customer confusion and upon cost concerns. The Committee felt that customers who have been previously balloted for interLATA service might be confused by a second intraLATA balloting process and believe that they were being reballoted for their choice of interLATA carrier. The 697 Committee also believed that it would be unduly expensive to ballot exchanges which have already been balloted for their interLATA carrier. Further, the Committee believed that it would be unnecessary to ballot a second time, because market incentives would stimulate intraLATA presubscription.

Under the 697 Committee's recommendation, customers who are simultaneously balloted for both interLATA and intraLATA presubscription and do not choose an intraLATA carrier would be allocated according to a formula. Nonselecting customers would first be allocated to the intraLATA-only carrier (US WEST) based on the proportion of total customers that selected US WEST in the intraLATA balloting process. Remaining nonselecting customers would be allocated among other carriers by matching the customers' interLATA carrier choices, if possible.⁶ Any remaining nonselecting customers would be allocated to the remaining carriers based upon the proportion of customers selecting those carriers for intraLATA service.

2. Commission Analysis

The Commission agrees with the 697 Committee that intraLATA presubscription balloting should only take place when it can be combined with interLATA balloting in the exchange. The Commission agrees that this method will help reduce customer confusion. It is also the most cost effective method of implementing intraLATA presubscription.

⁶ The matching with interLATA carrier choice would be subject to the limitation that a carrier could not be allocated more intraLATA customers than its proportion of unallocated customers.

The Commission also agrees with the Committee that sufficient market incentives exist to encourage IXC participation in intraLATA presubscription without a second balloting process.

The Commission will accept the Committee's recommended allocation method for customers who do not select an intraLATA provider in the balloting process. The Committee's system seems calculated to allocate nonselecting customers in as fair a manner as possible.

Finally, the Commission notes that GTE recommended that the PIC change charge be waived for one year in order to enable endusers to switch carriers more easily. Because this issue was not addressed in the Committee's report or mentioned in written comments other than GTE North's, the Commission will not waive the PIC change charge at this time.

E. Designated IntraLATA Toll Provider

1. The Committee's Statement

The 697 Committee made the following general statement regarding the issue of a designated intraLATA toll provider:

In an end office that does not provide intraLATA equal access, the designated intraLATA toll provider (DITP) should be the intraLATA toll provider that would carry all "1+" intraLATA calls in that end office. In end offices that have converted to equal access, but have not been balloted and allocated, customers which have not chosen an intraLATA carrier would be routed to the DITP.

The Committee stated that the implementation of the DITP would depend on the Commission's determination in Docket No. P-999/CI-87-695. The Committee made a general statement rather than a recommendation on this issue because the Committee did not wish to prejudge the Commission's findings in the 695 Docket.

2. Commission Analysis

The Commission has stated its intention of taking up the 695 Docket after this proceeding is resolved. Comments in the 695 Docket are currently due 30 days following the issuance of this Order.

The Commission will thoroughly analyze the issue of the designated intraLATA toll provider in the 695 Docket. Until the comments of parties have been heard in that docket and the Commission has fully considered the issues, the Commission will decline to make any determination regarding the DITP.

F. IXC Participation in the IntraLATA Market

1. The Committee's Recommendation

The 697 Committee made the following statement regarding the nature of IXC participation in the intraLATA 1+ presubscription market:

The study committee has examined the issue of whether the participation of carriers in the provision of "1+" intraLATA service should be mandatory or voluntary. This constitutes a public policy issue and the Commission should examine the issues identified in this report and make a determination. If voluntary participation for providing service is accepted by the Commission, a DITP may still be required pending the Commission's decision in P-999/CI-87-695.

This Committee statement reflects the fact that the 697 Committee was unable to reach a consensus on the issue of mandatory or voluntary IXC participation in intraLATA presubscription. The Committee was able, however, to identify three points in the intraLATA presubscription process at which a decision by IXCs on participation may occur:

1. Providing "1+" intraLATA equal access service in a converted end office in which the IXC is providing interLATA service or in an end office which will be balloted upon conversion and in which the IXC is planning to provide service;
2. Participating in the intraLATA balloting process in converted end offices where balloting will occur; and
3. Accepting the allocation of customers who do not make an intraLATA selection in end offices where intraLATA balloting occurs.

Commenting parties held different views as to whether an IXC providing interLATA service should be required to provide intraLATA service. Opinions also differed as to whether IXCs must participate in the allocation process for nonselecting endusers.

2. Commission Analysis

The Commission has consistently encouraged IXC's to expand their service areas so that Minnesota customers may have a greater choice of carriers. In an October 15, 1985 Order⁷ the Commission required all IXC's to "make material progress in expanding their service to new areas of the state which they do not currently serve, within a reasonable period of time."

The Commission facilitated IXC service expansion in the 582 proceeding, when the Commission adopted a system of statewide access charges. Under this system, a LEC collects the same access charges for an intrastate interLATA or an intrastate intraLATA call. The access charge system therefore does not present any economic barrier to an IXC adding intraLATA service to interLATA service.

The Minnesota legislature has also expressed a policy of encouraging service expansion by IXC's (and other telephone companies). Minn. Stat. § 237.60, subd. 3 states:

No telephone company shall unreasonably limit its service offerings to particular geographic areas unless facilities necessary for the service are not available and cannot be made available at reasonable cost.

The legislative encouragement of IXC expansion is also expressed in Minn. Stat. § 237.74, subd. 2, a recent piece of legislation directed to IXC's, which states:

No telecommunications carrier shall unreasonably limit its service offerings to particular geographic areas unless facilities necessary for the service are not available and cannot be made available at reasonable cost.

The Commission therefore finds that the general policy of increasing customer choice through IXC service expansion should be reflected in the implementation of intraLATA 1+ presubscription. The Commission considers it an unreasonable limitation of a service offering for an interLATA provider to refuse to offer intraLATA service in the same area when presubscription is available, unless good cause is shown. In this situation, the burden will be on the carrier refusing to offer intraLATA service to prove that the limitation of service meets the requirements of § 237.74, subd. 2 (1992).

The Commission will direct LEC's to inform the Commission if any IXC indicates a desire to appear on the interLATA ballot but not on the intraLATA ballot. The balloting process will be stayed pending a Commission investigation.

⁷ In the Matter of a Consolidated Proceeding to Investigate the Provision of Intrastate Intercity Telecommunications Services Within the State of Minnesota, Docket No. P-442, 443, 444, 421, 433/NA-84-212, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER.

G. IntraLATA 1+ Costs Recoverable by LECs

1. The Committee Recommendation

The 697 Committee made the following recommendation regarding costs associated with intraLATA 1+ equal access:

Costs associated with implementation of 1+ intraLATA dialing and presubscription (intraLATA conversion costs) should be identified pursuant to existing federal guidelines. (If a LEC requests an increase in rates, the Commission may upon its own motion or upon complaint investigate the costs and rates of the LEC pursuant to Commission rules.)

Costs associated with intraLATA conversion should be limited to those incremental costs actually incurred to add this limited capability to a converted end office.

The Committee recommended that costs of intraLATA conversion be limited to incremental costs incurred in adding that specific capability to an end office already converted to interLATA equal access or converting at the same time. Costs of converting to interLATA equal access capability should not be included within the intraLATA incremental costs.

The 697 Committee recommended that a LEC claiming intraLATA conversion costs should be required to identify and support such costs. If a LEC requests a rate increase due to conversion costs, the Commission may review the LEC's costs and rates upon the Commission's own motion or complaint. The Committee stated that LEC conversion costs should in no circumstances be passed through in the form of rate increases without Commission review.

In response, US WEST cited a 1993 opinion of the New York Public Service Commission⁸ as a reasonable decision regarding intraLATA 1+ presubscription cost recovery. In that decision the New York Commission recognized a loss of revenue for LECs which also provide intraLATA toll service. The New York Commission determined that IXC's who benefit from 1+ presubscription should bear all the costs. US WEST urged the Commission to follow New York's example and not require US WEST to pay a portion of the implementation costs. US WEST also asked the Commission to factor any loss of revenue for US WEST into the cost recovery mechanism on an ongoing basis.

2. Commission Analysis

The Commission agrees with the recommendation of the Committee that costs of presubscription should be limited to incremental costs, following federal guidelines. These guidelines identify the costs of equal access as the initial, incremental costs that are directly associated with providing equal access. Incremental costs would include right-to-use or user fees, if any, for the 2-PIC feature software; customer education, balloting, and allocation, if necessary; and necessary modifications of the LEC's internal support systems.

The one-time, incremental costs of conversion for intraLATA 1+ capability will fall to the LECs and should be recovered by them. After conversion, the forces of competition and the market place will determine who will gain and who will lose. As an example, from past experience with interLATA presubscription it is reasonable to conclude that intraLATA presubscription is likely to stimulate toll usage. It is possible that increased revenues from greater toll usage could counterbalance revenue losses from presubscription. Because ongoing net costs will be determined by the market place, the Commission does not agree with US WEST that an ongoing revenue formula should be applied to recover presubscription costs.

⁸ State of New York Public Service Commission, Opinion No. 93-12, Case No. 28425.

H. Operator Services

1. The Committee Recommendation

The 697 Committee made the following recommendation regarding operator service routing of calls upon implementation of intraLATA 1+ equal access:

All of the operator service routing should remain unchanged upon implementation of intraLATA presubscription with the exception of 0+ intraLATA interexchange calling which would be routed to the intraLATA carrier.

All parties except US WEST supported this Committee recommendation.

US WEST stated that it would experience economic hardship if this recommendation were adopted by the Commission. As a toll carrier, US WEST would experience a drop in revenues as customers choose other carriers for their presubscribed intraLATA carriers. As a LEC, US WEST would continue to carry its share of non-revenue producing 0- calls.

2. Commission Analysis

The Commission finds that the Committee's recommendation is consistent with the treatment of operator service routing in the MIEAC proceeding and should be adopted. The Commission notes that all LECs, not just US WEST, must bear the costs of handling 0- local calls. As a toll carrier, US WEST will not necessarily lose all intraLATA 0+ toll traffic, but will rather be subject to customer choice along with other carriers.

The Commission will adopt the Committee's recommendation regarding operator service routing under intraLATA presubscription.

I. Informational Meetings

1. The Committee Recommendation

The 697 Committee made the following recommendation regarding informational meetings for the public:

Prior to the implementation of intraLATA equal access, the Commission should hold information meetings throughout the State to familiarize the telecommunications industry and the public with the plan's procedures and requirements. Members of the study committee should assist the Commission in this endeavor.

2. Commission Analysis

As the Commission has stated previously in this Order, certain facts have changed since the Committee issued its original report in 1989. Since 1989, MIEAC has been approved and numerous LECs participating in MIEAC have converted to intraLATA equal access. In the MIEAC proceeding, no informational meetings were deemed necessary by the parties before the cutover took place.

As the Commission has structured the intraLATA 1+ presubscription process, most cutovers to presubscription will take place as a result of successful IXC marketing efforts rather than as a result of balloting. Customers will therefore not be notified of the availability of 1+ presubscription through the balloting process. The Commission will require LECs to notify all their customers in each affected end office, through a bill insert, of the import and timing of a pending cutover to intraLATA equal access. The Commission will require the LECs to submit the proposed educational materials to the Commission for review prior to distribution to the LECs' endusers. The Commission will not require informational meetings as a part of the implementation of intraLATA presubscription.

J. Follow-Up Reporting Requirements

1. The Committee Recommendation

The 697 Committee made the following recommendation regarding annual reporting requirements:

The study committee should be charged with an annual review of the effect of intraLATA conversion on the development of competition in Minnesota and on the public interest generally. This review should continue until such time as the Commission believes this review is no longer necessary. This investigation should include, but not be limited to, a determination as to whether competition has been affected by intraLATA conversion, the effect of intraLATA conversion on LECs and their subscribers, any additional findings as to the cost of intraLATA conversion, the ability of the industry to meet the implementation schedule, discussion of any problems encountered, and any recommended adjustments to the conversion schedule or implementation process. A report of the study committee's findings and recommendations should be submitted for the Commission's review by April 15th of each year until such time as the Commission decides the reports are no longer necessary.

2. Commission Analysis

The Commission notes that intraLATA 1+ presubscription has been widely implemented in Minnesota and other states since the Committee originally proposed reporting requirements. While the Commission still believes the suggested reporting requirements will produce useful information, there is no longer the same need for frequent reports.

The Commission will therefore adjust the 697 Committee's recommendation for today's reality. The Commission will require the Committee to file a report incorporating the suggested information in approximately two years from the date of this Order (i.e. on or before August 1, 1996). At that time, the Commission can analyze the filed information and determine if any further Committee reports will be required.

V. Other Issues Raised by the Parties

Several issues not covered in the Committee report were raised by the parties. The issues included payphone presubscription, interstate intraLATA toll traffic, the effects of pending federal legislation, and the necessity of rulemaking.

US WEST also argued that the Committee's recommendations were flawed and without sufficient record support. US WEST argued that the Commission did not take sufficient account of US WEST's unique position as both a LEC and a toll provider, and did not afford the Company due process in these proceedings.

A. Payphone Presubscription

1. Comments of the Parties

US WEST raised the issue of presubscription of pay telephones. According to US WEST, either the payphones it owns should be exempt from intraLATA presubscription requirements or US WEST should be presubscribed as their intraLATA 1+ carrier. US WEST argued that subjecting their payphones to enduser carrier choice would mean that US WEST would not have sufficient revenues to pay compensation to payphone premises owners. This could put continued availability of public payphone service in jeopardy.

Allnet argued that US WEST's payphones should be subject to the same competitive choice as other telephone services. If US WEST provides the best service it will be unlikely to suffer a loss in revenues.

2. Commission Analysis

The Commission notes that the issue of payphone presubscription was raised by US WEST and was not analyzed or discussed by the 697 Committee. Only Allnet commented regarding US WEST's proposal; no further record was built.

The Commission also notes that there is currently no consistent treatment of payphone presubscription for either interLATA or intraLATA service in Minnesota.

Because the issue of payphone presubscription must be explored more fully, and because there is no current policy upon which to base a Commission determination, the Commission will initiate an investigation into payphone presubscription. The Commission will require the

Department to file a report on this issue within six months of the date of this Order. Issues addressed by the Department should include, but not be limited to, the following:

1. How presubscription of company payphones, privately owned payphones and semi-public phones has been handled for US WEST, ILECs participating in MIEAC, and other LECs that have provided equal access (including GTE, United, Vista, and Mankato Citizens Telephone Company).
2. Costs and benefits of payphone presubscription.
3. Whether IXCs pay a commission to owners of payphone and semi-public phone locations.
4. Type and percentage of calls from payphones and semi-public phones that go through the presubscribed carrier.
5. Discussion (including availability) of billed party preference.
6. Recommendation for consistent statewide treatment of payphones and semi-public phones in terms of presubscription.

The Commission will allow parties to this proceeding to file responsive comments within 20 days of the filing of the Department's report.

B. Interstate IntraLATA Toll Traffic

1. Comments of the Parties

US WEST raised the issue of the implementation of 1+ presubscription in the Fargo-Moorhead LATA, which crosses the border between Minnesota and North Dakota. US WEST recommended that the Commission find that this interstate intraLATA traffic is under the jurisdiction of the FCC, not the Commission. The LATA would therefore remain unaffected by the Commission's decisions in this docket. According to US WEST, the 697 Committee failed to address this issue in its report.

Allnet argued that this question had been answered in Committee deliberations. According to Allnet, the FCC did not prohibit providing 1+ intraLATA presubscription for interstate calling.

2. Commission Analysis

The Commission agrees with US WEST that interstate intraLATA traffic is under FCC jurisdiction. Telephone traffic in the Fargo-Moorhead LATA which crosses the Minnesota/North Dakota border would be under FCC jurisdiction. Telephone traffic in that LATA which originates and terminates in Minnesota would be under Commission jurisdiction. Commission intraLATA 1+ presubscription determinations would apply to the latter traffic.

C. Federal Legislation

1. Comments of the Parties

In its comments US WEST pointed out that there is pending legislation in the U.S. House of Representatives which may change US WEST's provision of service in Minnesota. Under the Brooks-Dingell bill (H.R. 3626) Regional Bell Operating Companies (RBOCs) such as US WEST would be allowed to serve the intrastate interLATA long distance market if authorized by their state commission. The House bill would also allow RBOCs to enter interstate interLATA markets as resellers if their state commission has approved intraLATA 1+ presubscription.

According to US WEST, the federal legislation recognizes that intrastate intraLATA presubscription will disadvantage RBOCs and must be countered with greater RBOC freedom in the interstate market.

US WEST stated that 1+ implementation costs would virtually disappear if interLATA authority were granted to US WEST through the federal legislation. US WEST asked the Commission to wait to factor in the consequences of the Brooks-Dingell legislation before making a decision regarding intraLATA 1+ presubscription.

AT&T stated that the competitive situations in interLATA and intraLATA markets are completely different and therefore need not be treated in the same fashion at the same time. The Commission must not be influenced by the federal legislation but must decide intraLATA presubscription issues through considerations of customer choice and benefits.

2. Commission Analysis

The Commission has previously made the decision that intraLATA 1+ presubscription is in the public interest. With the assistance of the 697 Committee, the Commission is now in the process of working through issues of implementation and cost recovery. The possible effect of intraLATA presubscription on US WEST's entry into the interLATA market is not relevant to the Commission's present considerations. The Commission will continue to consider broad questions of the public interest as it makes its determinations regarding intraLATA 1+ presubscription.

D. Necessity for Rulemaking

1. Comments of the Parties

US WEST argued that rulemaking is necessary for the implementation of intraLATA 1+ presubscription, because the Commission's determination will prescribe a future process for all LECs.

No other party responded to US WEST's argument regarding rulemaking.

2. Commission Analysis

The Commission does not agree with US WEST that a rulemaking is necessary for the implementation of intraLATA 1+ presubscription. First, all parties who will be affected by the Commission's determination are parties to the proceeding and have the opportunity to be heard regarding the process. Second, the actual implementation of intraLATA 1+ presubscription will be different for every LEC because equipment varies by company and by end office. Third, implementation will not be a process of indeterminate length for which rulemaking would be suited, but rather a one-time event. Fourth, Commission precedent, such as intrastate interLATA presubscription and MIEAC intrastate intraLATA centralized equal access, indicates that rulemaking is not necessary for implementation.

E. US WEST's Arguments Regarding the Committee Report and Due Process

1. US WEST's Comments

According to US WEST, there are two reasons that it must be afforded special consideration if its due process rights are to be preserved:

1. US WEST alone provides both local service and intraLATA toll service. If US WEST loses 1+ toll revenues, local rates could be affected. This is a unique situation with unique economic consequences for US WEST.
2. US WEST has obligations and restrictions not shared by other carriers. It is the only carrier which cannot provide interLATA service, and the only carrier which is required to provide intraLATA service statewide.

US WEST argued that its unique circumstances were not afforded sufficient consideration in the intraLATA presubscription proceeding and its due process rights were therefore violated.

US WEST stated that the 697 Committee report did not provide a fair forum for dissenting opinion. The report was too limited and the Committee's recommendations were flawed. There were disputes among the parties which were not reflected in the final report.

US WEST argued that there was not a sufficient record to support the Commission's determinations. There remain material facts in dispute; these issues must be explored in contested case proceedings. Although the Commission held contested case hearings when it first decided that intraLATA competition should be allowed, intraLATA 1+ is entirely different from previous access code dialing. IntraLATA 1+ presubscription brings its own set of issues which must be decided in evidentiary proceedings.

US WEST stated that the 697 docket and the 695 (designated carrier) docket are completely intertwined and must be fully litigated together. According to US WEST, there is currently a balance of fairness between its burden of serving ILECs as the designated carrier and its benefit of serving as the exclusive 1+ long distance provider in US WEST exchanges. If the Commission decides the 1+ implementation issue without deciding the designated carrier issue, the delicate balance of fairness may be lost.

2. Commission Analysis

The Commission finds that US WEST's due process rights have been fully observed throughout the entire process of establishing intraLATA presubscription, including this proceeding.

In the 582 and the 212 proceedings, the fundamental issues of intraLATA 1+ competition and presubscription were fully contested. US WEST was a party to these proceedings and had the right to be heard throughout. US WEST had the opportunity to raise due process arguments

during these cornerstone proceedings but chose not to do so.

The 582 and 212 proceedings were part of a 10-year process in which the Commission has analyzed the issues underlying intraLATA 1+ presubscription and has concluded that presubscription is in the public interest and necessary for true competition. The Commission disagrees with US WEST that the present implementation determination is a departure from the previous proceedings, or that a decision on implementation issues requires a return to contested case hearings. The present implementation and cost recovery docket simply represents a logical progression in the Commission's analysis of 1+ presubscription.

The Commission does not find that there remain material facts in dispute which require contested case hearings. The issues in this proceeding represent policy decisions which would need to be decided by the Commission at the end of contested case proceedings if they were held. Such issues as the choice between voluntary or mandatory IXC participation, the best method of recovery of implementation costs, or the relative merits of modified 2-PIC or 2-PIC methods of carrier choice represent policy issues for the Commission. To decide such issues, the Commission must apply its own discretion and expertise, while drawing on the recommendations of the Committee. These issues are classic areas for the Commission's legislative policy making authority.

US WEST has been afforded due process throughout these proceedings and is not without recourse now. If the Company experiences a loss of revenues with the implementation of 1+ presubscription, US WEST, like every utility, may apply to the Commission for a rate increase to recover its revenues. While US WEST may prefer its current alternative form of rate regulation which substitutes an incentive plan for typical rate cases, the choice is US WEST's and does not represent any infringement of due process rights.

The fact that US WEST holds a unique position as both a LEC and a toll provider has not resulted in any reduction of due process rights for the Company. Throughout these proceedings, the Commission has kept in mind US WEST's unique circumstances. The Commission changed the Committee's recommendation to base cost recovery on presubscribed access lines because US WEST would bear a disproportionate burden under that method. The Commission remained aware of the importance of the designated carrier issue to US WEST, and restated its intention of taking comments on this issue within 30 days of this Order. In these and other instances the Commission took US WEST's circumstances into full account when determining implementation issues for intraLATA 1+ presubscription.

The Commission finds that US WEST has been afforded full due process rights throughout these proceedings. The Commission also finds that there is a sufficient record to support the Committee's report and policy recommendations and the Commission's findings in this proceeding.

VI. The Work of the 697 Committee

The Commission wishes to acknowledge the valuable work of the 697 Committee as it dealt with numerous difficult issues throughout a lengthy proceeding. Representatives of public agencies and utilities used their combined expertise to develop the issues for the Commission and to produce a thorough report. Many of the Committee's recommendations are being implemented as intraLATA 1+ presubscription comes into existence. Even recommendations which were amended or rejected were useful starting points for Commission analysis.

VII. Conclusion

The Commission will move towards full implementation of intraLATA 1+ presubscription in the manner described in this Order.

ORDER

1. LECs must provide 1+ intraLATA presubscription in an exchange no later than 18 months following receipt of a BFR for that exchange. However, all LECs must provide intraLATA equal access and presubscription in all exchanges by January 1, 1997. LECs may use end office conversion or centralized equal access to provide 1+ intraLATA equal access;
2. Within 60 days of receipt of a BFR, the LEC must file with the Commission, the Department and the IXC that submitted the BFR the proposed timetable for providing 1+ intraLATA presubscription and a description of the costs to provide the service. Interested parties, including the Department, have 30 days to file comments. Implementation of the 1+ intraLATA presubscription should proceed according to the timetable provided by the LEC unless otherwise ordered by the Commission.
3. Companies seeking a waiver from providing intraLATA presubscription by January 1, 1997 must submit their request by December 31, 1994. However, companies seeking a waiver are encouraged to file their waiver request in conjunction with their interLATA equal access plans due October 1, 1994 (as provided in the May 19, 1994 Order in Docket P-999/CI-93-1176). An extension request to provide the service later than 18 months after receipt of a BFR should be filed within 60 days of receipt of the BFR. Requests for a waiver or extension should include a detailed description of the costs to provide the service and the reasons for a waiver or extension. Interested parties have 30 days to respond.
4. The costs to provide 1+ intraLATA presubscription should be limited to the incremental costs to provide the service.

5. If the LEC wishes to recover the costs of providing intraLATA equal access and presubscription through an increase in rates, such an increase should be approved by the Commission prior to implementation of the new rates. The increase in rates should be in the form of a per minute of use charge applied to intrastate interLATA and intraLATA switched access minutes of use, including those minutes currently carried by US WEST as the designated carrier in non-MIEAC exchanges. The costs to be recovered should be amortized over five years using the LEC's last authorized rate of return as the cost of money.
6. Any LEC receiving Commission approval to increase rates must submit a filing in the fourth year of the amortization period detailing the exact costs expended, the revenues realized to that date, and a proposed rate to be charged in year five, using updated minutes of use, that would result in full recovery (but not over-recovery) of the costs to have provided 1+ intraLATA presubscription.
7. Implementation of 1+ intraLATA presubscription will enable the enduser to select as their PIC for intraLATA calls any authorized toll carrier, regardless of who the enduser selects, or has selected, for their interLATA PIC. This method of providing intraLATA presubscription is referred to as the full 2-PIC method.
8. In end offices where customers have already been balloted for their interLATA PIC or where the interLATA balloting process has begun, no balloting for the intraLATA PIC will occur. IXC's will be responsible for marketing their services to customers and becoming a customer's intraLATA PIC using the same process in place for changing interLATA PICs after balloting has occurred.
9. In end offices where interLATA and intraLATA equal access will be provided concurrently, customers will be balloted for both an interLATA PIC and an intraLATA PIC. LECs are directed to inform the Commission of instances where an IXC has indicated a desire to appear on the interLATA ballot but not on the intraLATA ballot. The ballot process should be stayed pending an immediate Commission investigation.
10. The Commission finds it to be an unreasonable limitation of service for an IXC that is offering interLATA presubscription services to a particular geographical area to decline to offer intraLATA services to that area unless the IXC demonstrates to the Commission that the proposed limitation of service meets the requirements of Minn. Stat. 1993 Supp., § 237.74, subd. 2.
11. Issues regarding a designated intraLATA toll provider are referred to Docket No. P-999/CI-87-695. Comments in that proceeding are due 30 days following the issuance of the final Order in the 697 proceeding.
12. All operator service routing remains unchanged upon implementation of 1+ intraLATA presubscription, with the exception of 0+ intraLATA interexchange calling, which should be routed to the intraLATA PIC.

13. All educational materials distributed to endusers by the LECs regarding 1+ intraLATA presubscription must be reviewed and approved in advance by the Commission or its Staff.
14. The IntraLATA Equal Access and Presubscription Study Committee must review the effect of intraLATA conversion on the development of intraLATA competition in Minnesota and on the public interest generally. Issues to be reviewed should include, but not be limited to, a determination whether competition has been affected by intraLATA conversion, the effect of intraLATA conversion on LECs and their subscribers, any additional findings as to the cost of intraLATA conversion, the ability of the industry to meet the implementation schedule, discussion of any problems encountered, and any recommended adjustments to the conversion schedule or implementation process. LECs and IXC's operating in Minnesota are directed to cooperate in the review process and provide, where possible, any requested information to the committee. The report should be submitted by August 1, 1996.
15. The Commission initiates a separate investigation into the presubscription of payphones for interLATA and intraLATA equal access in the State. The Department should address the issues listed at Section V (A)(2) of this Order and file a written report no later than six months from the date of the Order. Interested parties have 20 days to comment. The Department should serve a copy of its report on the Commission, the RUD-OAG, MIEAC, independent pay phone providers, all local telephone companies, and all IXC's.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)